to the United States Department of the Treasury (Treasury) under the Troubled Asset Relief Program (TARP) established by the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. No. 110–343 (which for purposes of this appendix shall be considered qualifying noncumulative perpetual preferred stock), including related surplus;

* * * * *

c. * * *

ii. * * *

(2) * * *

[8] Notwithstanding this provision, senior perpetual preferred stock issued to the Treasury under the TARP established by the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. No. 110–343, may be included in tier 1 capital. In addition, traditional convertible perpetual preferred stock, which the holder must or can convert at a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 22, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–25489 Filed 10–24–08; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID: OTS–2008–0013]

12 CFR Part 509

RIN 1550–AC27

Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. OTS last adjusted its CMP statutes in 2004. Consequently, OTS is issuing this final rule to implement the required adjustments to OTS's CMP statutes.

DATES: *Effective Date:* October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Marvin L. Shaw, Senior Attorney, (202) 906–6639, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 [1] (FCMPIAA) requires each agency to make inflationary adjustments to the CMPs in statutes that it administers.[2] Under the FCMPIAA, agencies must make those adjustments at least once every four years. OTS last adjusted its CMPs in 2004.[3] OTS's civil money penalty adjustment regulation is 12 CFR 509.103. An increased CMP applies only to violations that occur after the increase takes effect.

While the CMP statutes of many agencies provide for minimum and maximum penalty amounts, all of OTS's CMP statutes provide only for a daily maximum amount. Today's rule therefore refers only to maximum CMPs. Today's increases in maximum CMPs may not necessarily affect the amount of any CMP that OTS may seek for a particular violation. OTS calculates each CMP on a case-by-case basis based upon a variety of factors (including the gravity of the violation, whether the violation was willful or recurring, and any harm to the depository institution). As a result, the maximums merely serve as a cap.

Under the statute, the agency determines the inflation adjustment by increasing the maximum CMP by a ''cost-of-living'' adjustment. The ''cost-of-living'' adjustment is the percentage by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. OTS must use the CPI for All Urban Consumers (CPI–U) published by the Department of Labor.[4]

The statute contains specific rules for rounding any increase.[5] Agencies do not have discretion in choosing whether to adjust a maximum CMP, how much to adjust a maximum CMP or the methods used to determine the adjustment.

II. Summary of Calculation

To explain the inflation adjustment calculation, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted under 12 CFR 509.103, OTS may impose a daily maximum third-tier CMP not to exceed $1,250,000 for violations of certain banking laws.

First, we determine the appropriate CPI–Us. The statute requires OTS to use the CPI–U for June of the calendar year preceding the year of adjustment. Here, because we are adjusting CMPs in 2008, we use the CPI–U for June 2007, which was 208.4. We must also determine the CPI–U for June of the year the CMP was last set by law or adjusted for inflation. Because OTS last adjusted the CMPs under 12 U.S.C. 1818 in 2004, we use the CPI–U for June 2004, which was 189.7.

Second, we calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI–U for June 2007 (208.4) by the CPI–U for June 2004 (189.7). Our result is 1.098 (i.e., a 9.8 percent increase).[6]

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,250,000 multiplied by the inflation factor of 1.098 equals $1,372,500.

Fourth, we round the raw inflation amounts according to the rounding rules in section 5(a) of the FCMPIAA. Since we round only the increased amount, we calculate the increased amount by the subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $122,500 (i.e., $1,372,500 less $1,250,000). Under the rounding rules, if the penalty is greater than $200,000, we round the increase to the nearest multiple of $25,000. Therefore, the maximum penalty increase for our example is $125,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,250,000 plus $125,000 yields a maximum inflation adjusted penalty amount of $1,375,000.[7]

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[1] 28 U.S.C. 2461 note.

[2] Some of OTS's CMPs are in a commonly administered statute, 12 U.S.C. 1818. Each agency that administers that statute is making identical adjustments.

[3] 12 CFR 509.103; 69 FR 64249 (November 4, 2004).

[4] *http://data.bls.gov/cgi-bin/surveymost.*

[5] 28 U.S.C. 2461 *note* specifies that ''Any increase determined under this subsection shall be rounded to the nearest—''(1) multiple of $10 in the case of penalties less than or equal to $100; ''(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000; ''(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; ''(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; ''(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and ''(6) multiple of $25,000 in the case of penalties greater than $200,000.''

[6] A few CMPs were not adjusted for inflation in 2004. In such cases, the inflation factor is calculated from the time that CMP was last adjusted. For a CMP that was last adjusted in 2000, the inflation factor would be 20.9 percent. For a CMP that was last adjusted in 1996, the inflation factor would be 33 percent.

[7] Three CMPs are treated slightly differently because the statutorily mandated computation and the rounding rules did not result in any adjustment

Continued

III. Need for and Immediately Effective Final Rule

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.[8] Similarly, to issue a rule that is immediately effective, the agency must find good cause for dispensing with the 30-day delay required by the Administrative Procedure Act.[9] Moreover, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 [10] requires that a regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under the statute, agencies must make the required CMP inflation adjustments: (1) According to the very specific formula in the statute; and (2) within four years of the last inflation adjustment, or by October 31, 2008. Agencies have no discretion as to the amount or timing of the adjustment. The regulation is ministerial, technical, and noncontroversial. OTS is unable to vary the amounts of the adjustments to reflect any views or suggestions provided by commenters. Accordingly, OTS believes that notice and comment are unnecessary. For these same reasons, OTS believes that there is good cause to make this rule effective immediately upon publication.

IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking.[11] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

V. Executive Order 12866

OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $133 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered

List of Subjects in 12 CFR Part 509

Administrative practice and procedure, Penalties.

■ Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below.

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 2. Section 509.103(c) is revised to read as follows:

§ 509.103 Civil money penalties.

* * * * *

(c) *Inflation adjustment.* Under the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), OTS must adjust for inflation the civil money penalties in statutes that it administers. The following chart displays the adjusted civil money penalties. The amounts in this chart apply to violations that occur after October 27, 2008:

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4)	Reports of Condition—1st Tier	$2,200
12 U.S.C. 1464(v)(5)	Reports of Condition—2nd Tier	32,500
12 U.S.C. 1464(v)(6)	Reports of Condition—3rd Tier	1,375,000
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam	7,500
12 U.S.C. 1467a(i)(2)	Holding Company Act Violation	32,500
12 U.S.C. 1467a(i)(3)	Holding Company Act Violation	32,500
12 U.S.C. 1467a(r)(1)	Late/Inaccurate Reports—1st Tier	2,200
12 U.S.C. 1467a(r)(2)	Late/Inaccurate Reports—2nd Tier	32,500
12 U.S.C. 1467a(r)(3)	Late/Inaccurate Reports—3rd Tier	1,375,000
12 U.S.C. 1817(j)(16)(A)	Change in Control—1st Tier	7,500
12 U.S.C. 1817(j)(16)(B)	Change in Control—2nd Tier	37,500
12 U.S.C. 1817(j)(16)(C)	Change in Control—3rd Tier	1,375,000
12 U.S.C. 1818(i)(2)(A)	Violation of Law or Unsafe or Unsound Practice—1st Tier	7,500
12 U.S.C. 1818(i)(2)(B)	Violation of Law or Unsafe or Unsound Practice—2nd Tier	37,500
12 U.S.C. 1818(i)(2)(C)	Violation of Law or Unsafe or Unsound Practice—3rd Tier	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post Employment Restrictions	275,000
12 U.S.C. 1884	Violation of Security Rules	110
12 U.S.C. 3349(b)	Appraisals Violation—1st Tier	7,500

in 2004. Two of those penalties—12 U.S.C. 1464(v)(4) and 12 U.S.C. 1467a(r)(1)—were last adjusted in 2000. For those two penalties, we compared the CPI–U for June 2000 (172.4) to the CPI–U for June 2007 (208.4), resulting in an inflation increase of 20.9%. The third penalty—12 U.S.C. 1984—was last adjusted in 1996. Accordingly, we compared the CPI–U for June 1996 (156.7) to the CPI–U for June 2007 (208.4), resulting in an inflation increase of 33%.

In addition, a new CMP related to post-employment restrictions for senior examiners in the amount of $275,000 has been added to the list of penalties (12 U.S.C. 1820(k)(6)(A)(ii)).

[8] 5 U.S.C. 553(b).

[9] *Id.*

[10] 12 U.S.C. 4802.

[11] 5 U.S.C. 603.

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 3349(b)	Appraisals Violation—2nd Tier	37,500
12 U.S.C. 3349(b)	Appraisals Violation—3rd Tier	1,375,000
42 U.S.C. 4012a(f)	Flood Insurance	[1] 385 [2] 135,000

[1] Per day.
[2] Per year.

Dated: October 20, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–25453 Filed 10–24–08; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 140

RIN 3245–AF72

Debt Collection; Clarification of Administrative Wage Garnishment Regulation and Reassignment of Hearing Official

AGENCY: Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Debt Collection regulations by clarifying terminology within the regulation and streamlining administrative wage garnishment hearing procedures. These modifications are few in number and result in revisions to the definition of terms and the process by which a debtor requests a hearing regarding administrative wage garnishment.

SBA believes that this rule is routine and noncontroversial, and the Agency anticipates no significant adverse comment. If SBA receives a significant adverse comment, it will withdraw the rule.

DATES: This rule is effective December 11, 2008, without further action, unless SBA receives a significant adverse comment by November 26, 2008. If SBA receives any significant adverse comments, the Agency will publish a timely withdrawal of this rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF72, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting documents.
- *Mail, for paper, disk, or CD–ROM submissions:* Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416.
- *Hand Delivery/Courier:* Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the information to Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416, or send an e-mail to *walter.intlekofer@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make its final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Walter C. Intlekofer, Chief, Portfolio Management Division, 409 Third Street, SW., Mail Code 7024, Washington, DC 20416, (202) 205–7543 or *walter.intlekofer@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA regulations at 13 CFR 140.11 set forth the scope and processes by which SBA may institute administrative wage garnishment (''AWG'') against individuals in the collection of debts, as well as the process by which an individual may contest AWG. These regulations were promulgated in conjunction with U.S. Department of Treasury regulations concerning AWG. The process of AWG is implemented by Treasury on behalf of SBA through Treasury's debt cross-servicing program (in which Treasury pursues debts on behalf of SBA). Under the current § 140.11, debtors subject to AWG may request a hearing with SBA's Office of Hearings and Appeals (''OHA'') to contest the existence or amount of the debt, or the terms of repayment.

On implementation of AWG through the cross-servicing program, SBA became aware of certain issues regarding hearings requested by debtors regarding their AWG. First, § 140.11(d) and (e) refer to the authority of SBA to initiate AWG against its debtors and states that ''SBA will send a written notice'' of the AWG to the debtor. However, through cross-servicing, it is Treasury and its private contractors, not SBA, who initiate AWG on SBA's behalf, by sending the written notice. Thus, since § 140.11 was implemented in part to implement cross-servicing, it has become necessary to clarify the terminology throughout § 140.11 to make clear that not only SBA, but also public and private entities pursuing debt on SBA's behalf, may implement AWG against SBA's debtors.

This purpose is accomplished by redefining the term ''Agency'' in § 140.11, to include not only SBA, but also public and private entities that pursue debt on SBA's behalf. Thereafter, all other references throughout § 140.11 to ''SBA'' performing functions related to the implementation of AWG are changed to the ''Agency'' performing those functions, to make clear that not only SBA, but also public and private entities pursuing debt on SBA's behalf, may perform those functions under the regulation.

The second issue that arose on the implementation of AWG through the cross-servicing program relates to the hearing process itself. Under the current regulation, debtors who wish to contest the existence or amount of their debt, or the terms of repayment, must file for a hearing with an Administrative Judge at OHA, who is SBA's currently designated hearing official for SBA under § 140.11. Thereafter, those hearings are governed by the procedural rules set forth at Part 134 of Title 13 of the CFR. OHA procedures include full administrative litigation, with formal filings, deadlines, and motion practice. Additionally, SBA and Treasury discovered that the process of providing notice to debtors of their rights to request a hearing necessitated lengthy descriptions of the debtor's rights and duties to be transmitted with the notice of AWG.

Thus, OHA and SBA's Office of Financial Assistance have determined that by removing OHA's Administrative Judges and OHA procedures from the AWG hearing process, that process can be greatly simplified for not only debtors subject to AWG, but also to SBA. This purpose is accomplished by replacing references to OHA and the